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the effect of extinguishing the liability of that other. *Emerson v. Slater,* 22 Howard 28. In one case the court held that if a debtor puts a fund into the hands of the promisor upon a trust to pay the debt, the promise to pay is not within the statute in that it is the promisor's duty to pay the debt, so that when he promises the creditor to pay it, in substance he promises to pay his own debt, and not that of another. *Fullam v. Adams,* 37 Vt. 391.

INSURANCE—CONDITION IN POLICY FOR COMPANY'S BENEFIT—WAIVER BY GENERAL AGENT.—PACIFIC MUT. LIFE INS. CO. V. CARTER, 123 S. W. (ARK.).—*Held,* that a general agent of an insurance company may waive the performance of a condition inserted in a policy for its benefit. Battle and Hart, J. J., *dissenting.*

The general rule seems to be that an agent of an insurance company, authorized to issue policies of insurance and consummate the contract, binds his principal by any act or agreement, within the ordinary scope and limit of insurance business. *Am. Cent. Ins. Co. v. McLanathan,* 11 Kan. 533. An this is so notwithstanding a provision in the policy that no agent has such power. *Continental Casualty Co. v. Johnson,* 119 Ill. App. 93. Or even if there are restrictions imposed upon the power of an agent by custom as well as by the rules of the company, in regard to making changes in the printed conditions of a policy, he still has authority to waive a forfeiture for breach of a condition if the policy has already been issued in a proper case and without fraud on his part or that of the insured. *Viele v. Germania Ins. Co.,* 26 Iowa 9. But in any case the insured must have had no notice of the limitation upon the general agent's power. *Richard v. Springfield Fire & Marine Ins. Co.,* 114 La. 794. In the case of a general agent employing an assistant, if he accept the assistant's acts and adopts his judgment, then the assistant has power to bind the company by waiving the conditions of a policy delivered by him. *Davis v. Lamar Ins. Co.,* 18 Hun. 230. And this is so even though the assistant has been appointed without the knowledge of the company. *Harding v. Norwich Union Fire Ins. Soc.,* 10 S. D. 64. But as for a local agent, the weight of authority seems to be that he cannot waive a condition of forfeiture without express authority from the governing officials. *Lippman v. Aetna Ins. Co.,* 120 Ga. 247.

JUDGES—DISQUALIFICATION—PREJUDICE.—HARGIS V. COMMONWEALTH, 123 S. W. 239 (KY.).—The statement by the Commonwealth's attorney that he had "camped on the trail of" defendant's father and now proposed to "camp on defendant's trail, and put him where he belonged," was *held,* not to show such prejudice as to disqualify him to act as judge, he being subsequently appointed to that office, in the trial of the defendant for murder. Nunn and Barker, J. J., *dissenting.*

In the absence of statutory provision, bias or prejudice on the part of the judge does not disqualify him. *People v. Williams,* 24 Cal. 31; *Cooper v. Brewster,* 1 Minn. 94. But where under the law the bias or

prejudice of a judge disqualifies him, it must be made to clearly appear not only that the bias or prejudice exists, but that it is of a character calculated to seriously impair his impartiality and sway his judgment. *State v. Grinstead,* 62 Kan. 593; *Vance v. Field,* 89 Ky. 178. In *Inhabitants of Northampton v. Smith,* 11 Metcalf 390 (Mass.), a civil case, the rule is laid down that in order to take a case out of the jurisdiction of a judge the bias or prejudice must be a pecuniary or proprietary interest, or a relation by which he will gain or lose something by the result of the proceedings in contradistinction to an interest of feeling or sympathy or bias which would disqualify a juror. But it has been held that any interest, the probable and natural tendency of which is to create a bias in the mind of the trial judge for or against a party to a suit is sufficient to disqualify him, although such interest is not a pecuniary one. *Ex parte Cornwell,* 144 Ala. 497. Where a judge while prosecuting attorney, actively participated in the preparation of a criminal case he was held disqualified to try it. *Mathis v. State,* 3 Heisk 127 (Tenn.); *Contra, Kirby v. State,* 78 Miss. 175. But the mere fact that he was prosecuting attorney at the time of the commission of the offense will not disqualify him. *Wilkes v. State,* 27 Tex. App. 381. Nor is he disqualified by an opinion as to the guilt or innocence of the defendant where there is no prejudice in his mind which will prevent defendant from having a fair and impartial trial. *State v. Morrison,* 67 Kan. 144.

JUDGMENT—DEFAULT JUDGMENT—VACATING GROUNDS.—SCILLEY V. BABCOCK ET AL., 104 PAC. 677 (Mont.).—*Held,* that a default judgment, rendered 35 days after the entry of the default against defendant regularly served with process, should not be set aside on motion served about 20 days after the judgment, accompanied by affidavit averring that defendant employed an attorney, who promised to defend the action, but who forgot about it while he was engaged as a candidate for a public office in a political campaign.

It has been held repeatedly that failure to appear through carelessness or through forgetting the date is not sufficient ground for reopening the case. So where an attorney relied on a court clerk to inform him of the day on which a case was to be tried. *Western Union Telegraph Co. v. Griffin,* 1 Ind. App. 46. So where the defendant failed to file a demurrer to an amended complaint which he did not know was filed and defense was technical not affecting the merits. *People v. Rains,* 23 Cal. 128. Likewise where a railroad admitted receiving a summons, but counsel forgot the date and the defendant did not show good defense, default judgment was entered. *B. & O. C. R. Co. v. Flinn.,* 2 Ind. App. 55. A somewhat different rule prevails, however, in other jurisdictions. Thus where a defendant employed a lawyer who thought the action had been brought in another county, the court held that the counsel's failure could not be attributed to the defendant, nor be allowed to prejudice him, and that a default judgment could be set aside within a year. *Taylor v. Pope,* 106 N. C. 267. So where a lawyer mistook the term day, but could show a good defense to the case on his arrival soon after. *Farmers' Mutual Fire Insurance Co. v. Reynolds,* 52 Vt. 405.